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Attorneys for Plaintiffs James Estakhrian, Abdi Naziri,  
And the Certified Class

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

JAMES ESTAKHRIAN and ABDI  
NAZIRI, on behalf of themselves and  
all others similarly situated,  
Plaintiffs,

v.

MARK OBENSTINE, BENJAMIN F.  
EASTERLIN IV, TERRY A.  
COFFING, KING & SPALDING, LLP  
and MARQUIS & AURBACH, P.C.,

Defendants.

Case No. 2:11-cv-3480-FMO-CW

Hon. Fernando M. Olguin

**PLAINTIFFS' NOTICE OF  
MOTION AND MOTION TO  
AMEND OR ALTER JUDGMENT;  
MEMORANDUM IN  
SUPPORT THEREOF**

**Date: June 6, 2019**

**Time: 10:00 a.m.**

**Courtroom: 6D**

**Hon. Fernando M. Olguin**

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Please take notice that on June 6, 2019 at 10:00 a.m., or as soon thereafter as this matter can be heard, Plaintiffs James Estakhrian and Abdi Naziri will, and they hereby do, move pursuant to Rule 59(e) to alter or amend the Judgment entered by the Court on March 28, 2019 [[Dkt. 622](#)] (Judgment) by adding to the Judgment entered against Defendant Obenstine that:

1. The Preliminary Injunction entered by the Court on November 19, 2017 [[Dkt. 575](#)] is converted to a permanent injunction and incorporated into the Judgment.
2. That the Special Master's Order Setting Amount Of Attorney Fees Awarded To Plaintiffs On Motion For Discovery Sanctions entered on September 26, 2017 [[Dkt. 484](#)] is approved (as modified, if at all, by the Court) and incorporated into the Judgment.
3. That the Special Master's Order Granting, In Part, Plaintiffs' Motion For Sanctions Under 28 U.S.C. § 1927 And Setting Amount Of Sanction entered on September 26, 2017 [[Dkt. 483](#)] is approved (as modified, if at all, by the Court) and incorporated into the Judgment.

As described in the Memorandum in Support, the relief requested herein should be granted to prevent a grave injustice. *See, e.g., Marsh Aviation Co. v. Hardy Aviation Ins.*, 720 Fed. Appx. 418 (9th Cir. 2018) (A motion to amend a judgment may be granted where "the motion is necessary to prevent manifest injustice.").

Respectfully submitted.

Dated: April 23, 2019

MEHRI & SKALET PLLC

By: /s/ Steven A. Skalet

Steven A. Skalet

Attorney for Plaintiffs

## MEMORANDUM OF POINTS AND AUTHORITIES

Defendant Obenstine engaged in a host of unethical, illegal, and predatory practices. During the pendency of this action, based on a comprehensive review and based on the reasons stated therein, the Court issued a Preliminary Injunction in order to preserve assets for collection should Plaintiffs prevail at trial. [[Dkt. 575](#)]

Plaintiffs have now prevailed at trial [[Dkt. 622](#)], and it appears there are very limited known assets with which to satisfy the Judgment other than the property which is the subject of the Preliminary Injunction. Therefore, it is critical that the Preliminary Injunction be made permanent for Plaintiffs to have an opportunity to satisfy at least some part of the Judgment. *See, e.g., Marsh Aviation Co. v. Hardy Aviation Ins.*, 720 Fed. Appx. 418 (9th Cir. 2018) (A motion to amend a judgment may be granted where “the motion is necessary to prevent manifest injustice” (citing *Hiken v. Dep’t of Def.*, 836 F.3d 1037, 1042 (9th Cir. 2016) (internal quotation marks and alteration omitted)).

More specifically, when it granted the Preliminary Injunction, the court noted:

Obenstine’s own admissions demonstrate that he has dissipated assets and is nearing insolvency, rendering plaintiffs unable to recover monetary damages if a preliminary injunction is not granted. . . . Obenstine’s net worth has decreased dramatically over the past 18 months. (Compare Dkt. 502-2, Exh. B, Obenstine Dep. a net worth of \$2.4 to \$2.5 million) with Dkt. 502-2, Exh. A, Obenstine’s 9th Cir. Decl. at ¶ 3 (Obenstine’s February 21, 2017, declaration that “[his] net worth is approximately \$370,000”). According to Obenstine, he has already expended millions in defense of this litigation, and his prospects for future income are speculative, at best. An asset freeze, therefore, is warranted because plaintiffs would be unable “to recover monetary damages, if relief is not granted.” *See Johnson*, 572 F.3d at 1085; *see id.* at 1081 (asset freeze warranted when defendants have already expended millions of dollars “to defend th[e] suit”); *see, e.g., In re Focus Media Inc.*, 387 F.3d at 1086 (dissipation shown when \$3 million fund

1 decreased by two-thirds); Conn. Gen. Life Ins. Co. v. New Images of Beverly  
2 Hills, 321 F.3d 878, 881 (9th Cir. 2003) (irreparable injury shown when it was  
3 “probable that [defendant] would engage in misconduct to conceal or dissipate  
4 assets”).

5 There is no reason to believe that Defendant Obenstine’s financial condition  
6 has materially improved since the Court issued the Preliminary Injunction. The  
7 Preliminary Injunction’s well-reasoned discussion regarding the balance of  
8 hardships and public interest prongs for granting the Preliminary Injunction  
9 continues to be valid and applicable.

10 In the course of preparing this motion, Class Counsel conducted an informal  
11 title search on Mr. Obenstine’s Oregon property that is the subject of the  
12 Preliminary Injunction and were disturbed to find that Mr. Obenstine has  
13 apparently refinanced the Oregon property without notice or compliance with the  
14 Preliminary Injunction. The refinance is apparently in direct violation of the  
15 Preliminary Injunction and reduces Mr. Obenstine’s equity in the Oregon property  
16 by at least \$100,000, thereby adversely impacting the ability of the Class to collect  
17 on the Judgment [Exh. “A”, S. Ron Alikani Decl].

18 Secondly, it is important for the Court to rule on the Special Master’s Orders  
19 before it potentially loses jurisdiction since the Special Master’s Orders include  
20 recoveries against Defendant and Defendant’s counsel of over \$100,000. Because  
21 the class is highly unlikely to recover the full amount of the Judgment and  
22 sanctions from Defendant Obenstine, it is important to have the opportunity to  
23 collect these fees from Defendant’s counsel. The Court *sua sponte* sought the  
24 appointment of a Special Master and suggested the filing of a 28 U.S.C. § 1927  
25 motion, all of which involved significant expense, time and effort for which there  
26 has not been any compensation. [[Dkt. 484](#)] and [[Dkt. 483](#)].

27 The relief requested is necessary to avoid the presumably unintended  
28 consequence of providing Mr. Obenstine the opportunity to further frustrate

1 collection of the Judgment and denying compensation to Class counsel for the time  
2 and expenses incurred as a result of the Defendant and his counsel's abusive  
3 litigation and discovery tactics.

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5  
6 Dated: April 23, 2019

Respectfully submitted.  
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MEHRI & SKALET PLLC  
FAY LAW GROUP PLLC  
CHAVEZ & GERTLER LLP

7  
8  
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